

## DCP 345 ‘Sandbox Application’

### Draft Legal Text

**Add the following definitions into Section 1 ‘Definitions and Interpretations’:**

Sandbox Applicant                      The Applicant’s name contained within the Sandbox Application.

Sandbox Application                      A written request for a derogation, made to the Authority pursuant to the Authority’s regulatory Sandbox procedures as set by the Authority from time to time, and which the Authority has passed to the Secretariat for consideration.

Sandbox Register                      A register for the purpose of assisting the Panel in the operation of the Sandbox Application from initial request through to the completion of successful applications.

**Amend Clause 56 ‘Derogations’ as follows:**

#### **Panel’s Ability to Grant Derogations**

56.1        The Panel may (subject to Clause 56.3) resolve, on the application of any Party, to grant a derogation to any Party or Parties in relation to any obligation or obligations contained in this Agreement. In resolving to grant such derogation, the Panel may impose such conditions as it sees fit, and shall specify the term, scope and application of such derogation. Derogations, excluding Sandbox Applications, will normally only be granted in respect of newly introduced or amended obligations (or obligations due to be implemented in the future).

56.2        The Panel may, from time to time and as it sees fit (subject to Clause 56.3), resolve to retract any derogation, or to amend or add to the conditions applicable to any derogation.

56.3 A derogation granted to any Party by the Panel under Clause 56.1, or any retraction, amendment or addition under Clause 56.2, shall, in each case, only be effective if made in conformity with any representations received from the Authority in accordance with Clause 56.5.3 and if not vetoed by the Authority within 10 Working Days of notification of the Panel's decision and the rationale for it.

### **Application for Derogation**

56.4 A Party may, at any time, apply to the Panel for a derogation under ~~this~~ Clause 56.1 by notice in writing to the Panel Secretary.

56.5 Where the Panel Secretary receives such an application, it shall ensure that the matter is added to the agenda for the next Panel meeting occurring more than 10 Working Days after receipt of such application, and shall give notice to all the Parties and to the Authority, at least 10 Working Days before the Panel meeting in question:

56.5.1 setting out the identity of the Party by whom the application has been made and the terms of the derogation sought;

56.5.2 specifying the date on which the Panel is due to consider the matter; and

56.5.3 inviting representations or objections with respect to the derogation before that time.

56.6 Where representations or objections are made in accordance with Clause 56.5.3, the Panel Secretary shall, as soon as reasonably practicable after receipt thereof and unless such representations or objections have been marked as confidential, publish those representations or objections on the Website.

### **Licence Derogations**

56.7 Without prejudice to Clause 56.1, where the Authority grants a derogation to a Party under its Licence relieving that Party of certain of its licence obligations (including any derogation in respect of one or more of the Charging Methodologies or any element of them), that derogation shall also be effective for the purposes of this Agreement in the same terms (to the extent relevant to this agreement). The Party

seeking to rely upon such derogation shall, as soon as reasonably practicable after receipt of such derogation send a copy of it to the Panel.

### **Derogation from Performance**

56.8 For so long as a Party has the benefit of a derogation in accordance with Clause 56.1 or 56.7, that Party shall be excused from complying with the obligations specified in the terms of that derogation, and shall be deemed not to be in breach of this Agreement for failing to comply with the relevant obligations for the term of the derogation, but shall be required to comply with any modified obligations which are specified as a condition of the derogation.

56.9 A Party may, immediately by notice in writing to the Panel at any time, reject any derogation then applying to it, in which case the derogation shall cease to apply for the purposes of this Agreement and the Party shall become subject to the obligations under this Agreement set out in the derogation in question

### **Sandbox Applications**

56.10 Notwithstanding Clause 56.1, the Secretariat shall, in respect of any Sandbox Application received from the Authority, add it to the Sandbox Register and prepare a written report (the **Sandbox Report**).

56.11 Without prejudice to the generality of the foregoing, the Secretariat shall not be required to conduct an evaluation of a proposed DCUSA Derogation or submit a draft Sandbox Report to the Panel until a Sandbox Applicant has:

56.11.1 Provided all the information that the Secretariat reasonably requires in order to conduct such evaluation and prepare such a report; and

56.11.2 Paid to the Secretariat a fee which represents the reasonable costs to the Secretariat of processing the DCUSA Sandbox Application, such fee to be approved by the Panel from time to time.

56.12 The Sandbox Report shall:

56.12.1 Be addressed and delivered to the Panel;

- 56.12.2 Specify the Sandbox Applicant;
- 56.12.3 Specify the Party/Parties seeking the derogation (if not the Sandbox Applicant);
- 56.12.4 Set out the reason for the derogation;
- 56.12.5 Set out the derogation required to the Agreement;
- 56.12.6 Identify any impact on Parties inclusive of costs (if any);
- 56.12.7 State the length of time the derogation is required which should be no greater than two years from the Authority approval;
- 56.12.8 State why the derogation better facilitates the DCUSA Objectives; and
- 56.12.9 Provide a reporting plan.
- 56.13 Following receipt of a Sandbox Report, the Panel shall either:
- 56.13.1 Where the Panel considers that additional work or significant amendment of the Sandbox Report is required, send it back to the Secretariat to further develop the Sandbox Report; or
- 56.13.2 Following receipt of the Sandbox Report, ensure that the Sandbox Report is submitted to Parties and the Authority within 2 Working Days by the Panel Secretary. Parties are invited to submit representations or objections with respect to the Sandbox Application within 10 Working Days.
- 56.14 Where representations or objections are made in accordance with Clause 56.5.3, the Secretariat shall, as soon as reasonably practicable after receipt thereof and unless such representations or objections have been marked as confidential, publish those representations or objections on the Website.
- 56.15 The Panel shall consider any representations or objections received from Parties and the Authority and may make any amendment or conditions to the derogation request in recommending to the Authority to accept or reject the Sandbox Application.

56.16 Where the Authority is to make a determination under Clause 56.14, the Secretariat shall provide the Authority with:

56.16.1 The Sandbox Report;

56.16.2 The recommendation from the Panel;

56.16.3 Any amendment or conditions to apply;

56.16.4 Any representations or objections received from Parties; and

56.16.5 At the Authority's request, any other existing documents or information in respect of the Sandbox Application in question.

56.17 In making a determination under Clause 56.16, the Authority:

56.17.1 May follow such procedure as it considers appropriate;

56.17.2 May have regard to such matters, and to any representations by such Parties, as it considers appropriate; and

56.17.3 Shall in any event have regard to the recommendation made by the Panel.

56.18 Where the Authority determines that it cannot properly form an opinion on whether to accept or reject the Sandbox Application, the Authority may direct the Panel to revise and resubmit the Sandbox Report, in which case:

56.18.1 The Panel shall give effect to any direction of the Authority as to how the Sandbox Report should be treated, including where necessary sending the Sandbox Report back to the Secretariat to consider any matter identified by the Authority in such direction;

56.18.2 Once the Panel is satisfied that the issues identified by the Authority have been addressed, the Panel shall resubmit the Sandbox Report to Parties and the Authority in accordance with Clause 56.12.2.

56.19 Where the Authority, acting in accordance with Clause 56.16 determines that a Sandbox Application shall be accepted or rejected, it shall direct the Panel

accordingly. Any direction will be effectively given if communicated by the Authority to the Panel (which may be care of the Secretariat).

56.20 The Secretariat shall, as soon as is reasonably practicable after receipt of the direction by the Authority as referred to in Clause 56.18, notify the Sandbox Applicant and shall ensure that the Sandbox Register is updated so as to indicate the determination made in relation to the Sandbox Application.

56.21 The Panel may, from time to time and as it see fit, resolve to retract any derogation, or to amend or add to the conditions applicable to any Sandbox Application subject to seeking representations from Parties and approval from the Authority.